



**VILLAGE OF BARTLETT  
COMMITTEE MINUTES  
April 19, 2016**

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President Wallace called the Committee of the Whole meeting to order at 7:33 p.m.

PRESENT: Trustee Camerer, Carbonaro, Deyne, Hopkins, Reinke and President Wallace

ABSENT: Trustee Arends

ALSO PRESENT: Village Administrator Valerie Salmons, Assistant Administrator Paula Schumacher, Assistant to the Village Administrator Scott Skrycki, Finance Director Jeff Martynowicz, Director of Public Works Dan Dinges, Public Works Engineer Bob Allen, Community Development Director Jim Plonczynski, Building Director Brian Goralski, Grounds Superintendent Kevin DeRoo, Police Chief Kent Williams, Deputy Chief Joe Leonas, Village Attorney Bryan Mraz and Village Clerk Lorna Giles.

**PLANNING & ZONING COMMITTEE**

**Zoning Ordinance Update – Chapters 2 & 5**

Trustee Reinke stated that he had a couple of questions and asked the Community Development Director Jim Plonczynski to give an overview.

**CHAPTER 5 – RESIDENTIAL DISTRICTS**

Community Development Director Jim Plonczynski stated that this is the updated Chapter 5 of the Zoning Ordinance. Some of it is a housekeeping issue and some is in our continued attempt to do a revision of the entire zoning ordinance. The Board has seen four previous chapters plus the sign ordinance and tweaked the industrial business park ordinance. This is the seventh chapter and it's really the residential district section of the ordinance that has to do with the uses, bulk requirements, how residential development in the zoning ordinance is perceived and regulated. The previous chapter was 82 pages in length; the revised Chapter 5 has been condensed to just 9½ pages. Charts are now being utilized to eliminate duplication and redundancy from each residential zoning classification, thereby simplifying the Ordinance.

**POLICY ISSUES**

**Commercial Motor Vehicles, Inoperable Vehicles, Recreational Vehicles, Trailers, All-Terrain Vehicles, Watercraft, Snowmobiles and Semi-Trailers** – This ordinance has been revised and now clarifies specifically for the distinction between commercial motor vehicles and trailers. Trailers are now “generally” categorized so that **ANY** trailer, regardless of type, will fall under this revised section of the ordinance. Staff believes



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these modifications give the Village a stronger case if a violation were to go to trial. (Please see Section 10-5-3, Page 4.)

**Churches/Religious Institutions/Places of Assembly** – Previously, the term “Place of Assembly” was not defined in our Zoning Ordinance and often was used interchangeably with Religious Institution. The ordinance was also not consistent in the regulation of religious land uses as required by the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). RLUIPA states that, subject to some exceptions, local and state governments may not “impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution.”

In this revised ordinance, churches would now be classified as a Religious Institutions and would be regulated the same as “Places of Assembly” since they have comparable impacts (i.e. parking, noise, traffic, etc.). Places of Assembly, Religious Institutions, Lodges (fraternal and civic), equal or less than 10,000 sq. ft. would be permitted by right in the ER-1 and ER-2 (1 acre or larger) Zoning Districts, and as a special use in the remainder of the residential districts. These same uses, if greater than 10,000 sq. ft., would require a special use in all residential districts. Staff believes this revised ordinance more closely meets the Religious Land Use and Institutionalized Persons Act requirements.

**Impervious Surface** – The impervious surface regulations were approved on February 4, 2014 by Ordinance 2014-07 An Ordinance Amending the Bartlett Zoning Ordinance with Respect to the Regulation of Impervious Surfaces in Residential Zoning Districts. This ordinance set a maximum impervious surface percentage for residential lots based on their lot size to reduce storm water runoff and maintain green space (see Table 5-4 on Page 10.) The Staff has been implementing this ordinance and its regulations since its inception. To date, no variations have been requested.

### **CHAPTER 2 – RULES AND DEFINITIONS (Pertaining Only to Chapter 5 Updates)**

Sections of Chapter 2 that have been updated per the revisions made to Chapter 5 (i.e. Places of Assembly added).

The staff recommends forwarding the updated Zoning Ordinance Chapters 2 & 5 on to the Zoning Board of Appeals for further review and to conduct the public hearing.

Trustee Reinke asked about cell towers and the fact that they are “Special Uses” in the ER-1, ER-2 and ER-3. He didn’t think cell towers should be a special use in any residential district. If we say that something is a special use than legally it’s a legislative determination that the use is appropriate for that zoning district. He didn’t feel that cell towers are an appropriate use in those zoning districts. He welcomed the cell company



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to pitch the location of the tower in a residential district, we will give them their due process. He didn't think that it is a special use.

Attorney Mraz stated that if a use is not listed as either permitted or special, the under the Bartlett Zoning Ordinance it is a prohibited use. Federal laws such as the Telecommunications Act ("TCA"), FCC rulings and the case law that interprets them are eroding municipal zoning ordinances and the ability of municipalities to restrict siting when it comes to cell towers. It seems that the crux of the cases come down to where the cell phone providers have a gap in their coverage. In the old days, everyone had landlines and consumers did not expect perfect cell phone reception in their homes. The Village experienced a cell tower siting petition at the horse farm off of South Bartlett Road which was zoned residential and was directly across the street from residential homes. The Village hired an expert to refute the lack of coverage claim and prove the petitioner, US Cellular, did not sufficiently explore alternate sites. The Village hired other experts as well including an appraiser. The expectation of carriers now, and they argue their customers as well, is they want to have good cell signal even in their basements. Carriers often claim they need to have cell towers at more heavily populated places and at higher elevations. Hence, the Village has allowed cell antennas to be put on our water towers because of their height. Those are sometimes in residential districts. In the draft before you, Staff tried to limit special uses for cell towers in residential districts to the larger residential zoned ER areas to avoid a facial challenge to its Zoning Ordinance and from a practical side open up more geographic areas to overcome a TCA challenge. He stated that Trustee Reinke was correct in the sense that once you make the legislative determination that something is a special use, it is a legislative finding that it is permitted and requires a tough standard to turn down a special use request. It is a trade-off trying to meet the federal legislation and preserve to the extent possible traditional zoning authority. If the Village limits cell towers to commercial, industrial and a few larger residential districts, carriers at least in theory, will go through the special use process. The standard for turning down a special use permit is that it must have some extraordinary impact different than other similarly zoned property or cause a problem that another special use in that same district would not. It is a tough standard but that was the thinking rather than outlaw cell towers from all residential districts.

Trustee Reinke asked where else are they a special use under the existing ordinance.

Mr. Plonczynski stated that most of the time it is the height regulation and we have them on top of water towers, ComEd poles in residential districts and field lights in parks.

Trustee Reinke stated that in a commercial or industrial district you will treat it as a height issue but not as a use issue.

Mr. Plonczynski stated that is generally how they have treated it in the past.



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Trustee Reinke asked if anyone has strong feelings on this.

President Wallace stated that it sounds like the height thing is in the residential as well.

Plonczynski stated that where they have been placed, primarily in the residential districts in town, are on the water towers. We have given our water towers a height allowance so the cell towers can fit.

Attorney Mraz stated that there is limited space on the towers and carriers claim to have an area of poor reception anyway in trying to get a special use or variation for a height allowance.

President Wallace asked if there was an area of poor reception in Bartlett.

Mr. Plonczynski stated that we have some gaps. Our consultant did an analysis and found some gaps in coverage a couple of years ago for the carrier in question. Providers regularly approach us about adding new equipment and locations.

Attorney Mraz stated that their technology changes all the time and then they talk about shorter towers, more prevalent, versus a big tall tower. He stated that he thought it a little problematic to just say "none" in residential districts across the board, given that the federal law will look at the gaps in their coverage and trump our zoning ordinance. If the Board tries to limit it to a few additional areas then the Village will have a stronger argument. A carrier is required to do a site suitability study that includes alternate site analysis, but that is often perfunctory. Most of the Village's industrial zoned property is on the west side of town but that isn't necessarily where the carriers need it.

President Wallace stated that this is the first time he has heard there were gaps in coverage.

Attorney Mraz stated that originally the cases held that if competing carriers did not have a gap, there wasn't one, but more recent cases look to the petitioner itself and whether that one provider has a gap in its coverage and then allow it to put up a tower. Carriers do a lot of sharing and co-location because of the investment cost of a tower, but they each prefer their own. The carriers' idea of what is good coverage and what we may think, could be something different. The demand of the public has changed what that is and the prevalence of cell phones and people's expectations.

Trustee Deyne stated that the technology is constantly changing. He likes the idea of the special use because that gives us the opportunity to look at that.



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Attorney Mraz stated that when a carrier comes in, staff pushes for using an existing structure or building, or if there are none, for a stealth tower. They are told to look at ball field lights or anything that is not a stand-alone tower. We cannot guarantee that will always work, but his thought is to outlaw them all together in residential districts would be problematic. Carriers have limited areas to place cell antennas and the Village will have a stronger argument if are not just allowed by application of the zoning ordinance stuck out on the west end of the Village.

Trustee Reinke then referred to Commercial Motor Vehicles. He realized there were issues regarding alleged vagueness, ambiguity in the ordinance. He asked if they were comfortable with the phrasing.

Attorney Mraz stated that you have to look at Chapter 2 where the definitions have also been amended and Staff spent a lot of time with the proper wording.

Mr. Plonczynski stated that they spent extensive time reviewing the Illinois Vehicle Code with the traffic division of the Police Department and input as well from the code officers, and this is the language that they came up with.

Trustee Reinke referred to the Site Plan Review. He asked if someone comes in for a building permit for a multi-family or non-residential use, will they have to go through the site plan process. What if someone was coming in with a sign permit? Would the sign permit trigger the site plan review requirement?

Mr. Plonczynski stated “no”.

Trustee Reinke asked if someone was running a non-residential use in a residential district, legal non-conforming use and their water goes out - will they have to come in for a building permit and will it trigger the site plan review?

Mr. Plonczynski stated that the site plan review provisions are also elsewhere in the Code, but it is intended for townhome developments or if you had a park type use, or a church or place of assembly – those would have to go through site plan review in the residential district.

Trustee Camerer asked for clarification on the revised ordinance for the churches. Are they not being regulated currently?

Mr. Plonczynski stated that they are probably over-regulated or are inconsistent.

Trustee Camerer talked about parking, noise and traffic. It could be easy for someone to say that the church is too noisy, just because they don't like the church or the



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property or they are not religious. Can they come to the Village and would this be an issue?

Plonczynski stated that it is more when you are siting new uses. We were treating churches different than other places of assembly. The proposed new banquet facility will be treated like a new church. They would have to be treated equally. He thought the reason was because all of them can generate noise, traffic and congestion so the previous ordinance was not treating them equally. That is the intent of the law. We still get noise complaints from the churches and large places of assembly. Under the new ordinance they will be treated equally.

Attorney Mraz stated that there were inconsistencies. One district would have permitted use and another a special use. The Village should try to avoid having any ordinance declared unconstitutional on its face. There will also be questions about whether it was constitutionally applied. There are cases, for example City of Evanston case, where the municipality just made churches a special use in every district. The courts have said that you can't make everything a special use. There must be some logic or rational basis. A church in an ER-1 district will be different than another district. The Board will make the ultimate decision based on the evidence that is presented to it. The idea is that the impact of a larger church and a banquet facility are often much the same. Residents may object whether it's a banquet facility or a church.

Mr. Plonczynski stated you will see it as a banquet facility before you see it as a church. That is coming up soon and they will make that argument that Trustee Camerer just stated.

Administrator Salmons stated that this law makes it less likely that they would be involved with a church that was making too much noise or had a parking issue. We have had some neighborhood church issues where people went ahead and had church services on Sunday morning or Thursday nights, in their home. Unless they are parking over the sidewalk or blocking things, they may not be prohibited.

Trustee Camerer referred to the Agricultural changes. He thought that it seemed restrictive from the standpoint of poultry and bees. There are towns that are making efforts to have pilot studies (Elgin) that allows a certain amount of residents to have chickens without a rooster. As far as bees go, Hanover Park has a designated area for bee keepers to come and put their bee hives up.

Attorney Mraz stated that the draft under consideration regulates those uses in small yards and considers the impact on the neighbors. The draft ordinance says 100 feet. Staff has encountered problems and didn't have a clear restriction. The uses are allowed in Agriculture Districts, of which there may be one, so from that standpoint this



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is less restrictive. Neighbors were unhappy when there were bees in close proximity to small children.

Trustee Camerer stated that was a weak argument when it comes to bees throughout the world. You need bees for pollination. Without bees, we don't exist.

Attorney Mraz stated that the ordinance does not outlaw bees.

Mr. Plonczynski stated Staff get requests for backyard chickens, aviaries, and those types of things. This section of the ordinance is the same as before except for a few changes. If you wanted to change the ordinance to allow for chickens and bees in closer proximity, we can do that. This is to regulate the areas with smaller yards.

Trustee Camerer stated that he would like to see input from other towns in the area.

Mr. Plonczynski stated that they have done some research in the chicken area because that seems to be the most requested. Some towns that have chicken ordinances that allow them, have to be kept in heated, enclosed yards with running water and electricity. Bee keeping is becoming more prevalent in urban areas. We didn't have any regulation in the past and the few that we had were in close proximity of other homes and they did get some complaints.

Trustee Camerer stated that the villages that are looking at things like this are progressing. They are looking at ways to bring in other types of food, hobbies, and you need these things. He hates to see government come in and tell people what they can't do.

Mr. Plonczynski stated that a few instances where people have been keeping chickens, sometimes they tend to be free range chickens and they end up all over.

Trustee Camerer stated that he would like to have further discussions on this. He stated that Elgin has a pilot study of some sort as well as Hanover Park and possibly St. Charles. The question is, why are they forward thinking more than we are. He thinks we should be considering it.

Trustee Hopkins stated that Trustee Camerer brings up an extremely good point and he thinks the language on this zoning change is very restrictive. He thought they should look at different possibilities as well as other communities.

Mr. Plonczynski stated that it will be a combination of reducing the distances and requiring that you have those animals in some sort of structure. They will do more research on other towns.



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Trustee Camerer asked if they can have more information in a month or two.

Mr. Plonczynski stated that this has to go to the Zoning Board for a text amendment. They will get that information ready for them so they know it is the Board's desire.

President Wallace stated that it was way more restrictive in the prior version saying that they needed 10 acres.

Mr. Plonczynski stated that the Sunset Hill Farms/Litchfield area with larger lots was the area that the restrictions were originally written for. The distance requirement is because of their experience with the bees.

Trustee Camerer asked if anyone had beehives in the village.

Plonczynski stated "yes", they have them.

Trustee Camerer thought it is an interesting hobby.

Mr. Plonczynski stated that he was sure it is a great hobby but unfortunately, the one that was located in town was in proximity to someone who had children with allergies.

President Wallace thought it would be good information to know how many 2+ acre lots we have in the village.

Trustee Hopkins asked how often residents come into the building department and want to put up a patio, deck or shed and they are told that they cannot.

Building Director Brian Goralski stated that they get about six per day. They do their due diligence and look at them. About 85% are allowable. It is just the small lots that have a sea of concrete that have the issues. There are other ways they can obtain their requests and we inform them of that process.

Trustee Reinke stated that he did not understand why a pool is a problem. He understands that it's not pervious but at the same time it's containing the water.

Mr. Goralski stated that was his argument with Jim Plonczynski but Jim won.

Mr. Plonczynski stated that they are looking at it for the coverage of the lot. There is usually a deck around the patio or an in-ground pool with a patio so they count it as an impervious surface and most towns do.

Trustee Camerer stated that he has a problem with the impervious surface thing as well.





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Mr. Plonczynski stated that they experience that in the older parts of town with flooding issues. They have spent a lot of money in those areas to build extra detention areas to cover that and that is the trade-off. There are more restrictive ordinances on impervious surfaces in other towns - ours is fairly relaxed.

President Wallace stated that if the zoning commission is going to look at this can they look at the above ground pools as well. It should make sense for people.

Trustee Hopkins asked if they will hold off on the public hearing since they may make changes.

Mr. Plonczynski stated that he would like to go to the Zoning Board for the public hearing and their input with that information and bring it back to the Board.

Trustee Hopkins stated that maybe they should hold off on the public hearing because they may make some changes.

President Wallace stated that there is a lot here. He would be more comfortable with getting the Zoning Board's input and have it come back to them and do the public hearing after that.

Attorney Mraz stated that the public hearing is before the Zoning Board so it's either take the message and incorporate those into a document and that is what the public hearing is on. You are saying that alternatively, let's see what those changes are and bring it back to the Committee. See those before it's sent to the Zoning Board where the public hearing will take place.

Trustee Hopkins thought they should get it, review it, make some changes. We will review it and send it back to them.

Trustee Camerer agreed.

Mr. Plonczynski stated that the Zoning Board sometimes takes more than one meeting to look at something like this. We can have them give it an initial look, tell him the suggestions and they can make recommendations on those areas, bring it back to the Board and then hold the public hearing after that. If the Board is comfortable with their changes than we can go back to them with the public hearing.

Trustee Reinke asked if there were any part of the proposed amendments that he would consider urgent. He sensed a little hesitancy.

Plonczynski stated only the commercial vehicles.



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Trustee Hopkins asked if they can take that out and have a public hearing on commercial vehicles. That can be the first part that is reviewed.

Mr. Plonczynski stated that they can split it up that way and have the public hearing on a portion of it and get their feedback on the balance.

Trustee Camerer thought if they heard it first, they would have a better idea on what to expect.

Administrator Salmons stated that they typically get it to the Board first.

President Wallace stated that they should take the commercial vehicle portion, have the public hearing with the Zoning Board and bring it back to the Board. The rest of the proposed changes will get additional information and bring it back to a future Committee meeting.

There being no further business to discuss, Trustee Deyne moved to adjourn the Committee of the Whole meeting and that motion was seconded by Trustee Camerer.

**ROLL CALL VOTE TO ADJOURN**

**AYES:** Trustees Camerer, Carbonaro, Deyne, Hopkins, Reinke

**NAYS:** None

**ABSENT:** Trustee Arends

**MOTION CARRIED**

The meeting adjourned at 8:11 p.m.

Lorna Gilless  
Village Clerk  
LG/